

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Financial Services

**AGENDA DATE:** January 23, 2007

**CONTACT PERSON/PHONE:** Gonzalo Cedillos, P.E., 541-4074

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the City Manager is hereby authorized to sign Temporary Rights of Entry, approved as to form by the City Attorney, allowing access to the property owned by the City of El Paso in order to conduct surveys on said property, subject to the requirements and limitations of said Temporary Rights of Entry.

**BACKGROUND / DISCUSSION:**

City receives requests from various entities for permission to enter onto City properties and City controlled public rights-of-way to collect certain geotechnical and hydrological information and perform the same services, which may include visual inspections, test borings and other exploratory work as may be necessary to complete the investigation being made of said site.

**PRIOR COUNCIL ACTION:**

Yes.

**AMOUNT AND SOURCE OF FUNDING:**

None.

**BOARD / COMMISSION ACTION:**

CARE Committee endorsement.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_



(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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CITY CLERK DEPT.

## RESOLUTION

**WHEREAS**, the El Paso City Council has approved Ordinance No. 16015, which allows the City Manager to negotiate and enter into contracts, agreements for the rental of or which grant the use of City facilities for special events, when doing so is an appropriate use of the particular City facility and done in accordance with any ordinance guidelines or policies that may have been adopted or established by the City Council, and

**WHEREAS**, the City receives requests from various entities for permission to enter onto City properties and City controlled public rights-of-way to collect certain geotechnical and hydrological information and perform the same services, which may include visual inspections, test borings and other exploratory work as may be necessary to complete the investigation being made of said site,

**NOW THEREFORE**, be resolved by the City Council of the City of El Paso,

That the City Manager is hereby authorized to sign Temporary Rights of Entry, approved as to form by the City Attorney, allowing access to the property owned by the City of El Paso in order to conduct surveys on said property, subject to the requirements and limitations of said Temporary Rights of Entry.

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.**

THE CITY OF EL PASO:

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Theresa Cullen-Garney  
Deputy City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Carmen Arrieta-Candelaria  
Chief Financial Officer

# Draft SAMPLE

For City property, other than EPIA property, temporary right of entry  
Staff would need to review and modify as needed for identified requests.

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07 JAN 12 AM 8:45

THE STATE OF TEXAS )  
)  
COUNTY OF EL PASO )

## TEMPORARY RIGHT OF ENTRY

This Temporary Right of Entry is granted on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by the CITY OF EL PASO (the "GRANTOR") to \_\_\_\_\_ (the "GRANTEE").

**WHEREAS**, GRANTEE has requested access to property owned or controlled by the GRANTOR (the "City Property"), in order to insert reason for request i.e., conduct a field surveys, soil borings, etc. and a copy of such request being attached hereto and incorporated herein for all purposes as **ATTACHMENT 1**; and,

**WHEREAS**, GRANTOR consents to and approves of the entry onto the City Property by GRANTEE and its contractors and subcontractors, subject to the provisions noted herein, for the completion of insert reason for request i.e., conduct a field surveys, soil borings, etc.;

### **NOW THEREFORE, KNOW ALL BY THESE PRESENTS:**

That GRANTOR, as the lawful owner or the lawful owner with control of the City Property described more fully in **ATTACHMENT 2**, which is attached hereto and incorporated herein for all purposes, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) the receipt and sufficiency of which is hereby acknowledged, paid by GRANTEE, hereby grants a temporary right of entry upon, over, and through the City Property described in **ATTACHMENT 2** as necessary to perform the noted insert reason for request i.e., conduct a field surveys, soil borings, etc. and related work described herein.

### **IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:**

1. Access to the City Property shall be granted solely to allow for insert reason for request i.e., conduct a field surveys, soil borings, etc. and related work that is limited to non-invasive environmental, cultural, and engineering surveys, as well as any archeological data recovery required by state and federal laws. Except as noted herein, no construction or excavation is permitted through this instrument. GRANTEE shall bear all costs and expenses associated with the work contemplated herein. All insert reason for request i.e., conduct a field surveys, soil borings, etc. and related work to be performed on the City Property shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws, rules, and regulations. GRANTEE shall obtain all applicable permits required for the completion of the work contemplated herein.

After the survey and other work is completed, GRANTEE shall restore the City Property to substantially the same condition as found prior to commencement of said work, normal wear and tear excepted, and shall immediately remove its equipment or other equipment from the City Property. Said restoration shall include, but not be limited to, the closure of any inspection holes and replacement of any excavated dirt or other material. Further, all work shall be completed in a manner to ensure that no damage shall be done to the City Property. Should any damage occur, GRANTEE shall be fully responsible for the repair of such damage.

2. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the property, GRANTOR does not convey any other right, title, or interest in the City Property herein.
3. Unless extended by written instrument signed by GRANTOR, the rights granted herein shall expire on \_\_\_\_\_, 200\_, without regard to whether the referenced **insert reason for request i.e., conduct a field surveys, soil borings, etc.** and related work has begun or been completed. However, this Temporary Right of Entry may be extended or amended in writing, upon execution of both parties.
4. GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT OF GRANTEE'S ACTIVITIES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.
5. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.

**(Is it possible that any request for a ROE, other than EPIA Property, would involve entry on to a secured site and thereby require a security clearance? The following is**

07 JAN 12 AM 8:45

CITY CLERK DEPT.

**language included in the EPIA ROE and could be modified as appropriate for non-EPIA/City secured properties.)**

6. All persons requiring access to the Airport Property shall be subject to the security clearance and identification badge requirements required of all persons entering the secured Airport Property. Failure to fully comply with such requirements may result in the termination of this Temporary Right of Entry. Upon completion of the required security clearance and badge requirements, GRANTOR shall provide each person requiring access a construction identification badge. Issuance of such badges shall also require a non-refundable application fee by GRANTEE of FIFTY AND 00/100 DOLLARS (\$50.00) per badge. Upon termination or cancellation of this Temporary Right of Entry for whatever reason, GRANTEE shall immediately return all identification badges to the Director of Aviation. The loss of any badge shall result in the additional fee of THIRTY FIVE AND 00/100 DOLLARS per lost badge. Further, in order to replace any lost badge, GRANTEE shall be required to complete the application and badge process again, including payment of the non-refundable application fee noted above and completion of the security clearance and badge issuance process.
7. In completing the referenced **insert reason for request i.e., conduct a field surveys, soil borings, etc.** work, GRANTEE anticipates the use of the contractors and subcontractors noted herein. In the event that additional contractors or subcontractors are deemed necessary by GRANTEE, GRANTEE shall provide written notice of the need for such additional contractor or subcontractor to GRANTOR. **(If the non-EPIA City Property is secure, this language may be applicable--** Due to the secure nature of the City Property, only those contractors or subcontractors that have completed the security clearance and badge requirements noted within this Temporary Right of Entry shall be granted access to the City Property.)
8. GRANTEE and its contractors or subcontractors shall coordinate the **insert reason for request i.e., conduct a field surveys, soil borings, etc.** and related work with the **insert the name of the contact person--Capital Assets Manager?** in advance, so as to minimize any potential interference with the performance of GRANTOR's use of the City property. GRANTEE shall provide a daily work schedule to the **insert the name of the contact person--Capital Assets Manager?**, identifying the location of the GRANTEE, its contractors, and its subcontractors each day for which access to the City Property is required. GRANTEE's activities on City Property shall be limited to the period between \_\_\_ a.m. and \_\_\_ p.m., Monday through Friday. GRANTEE shall request and receive written approval in advance from the **insert the name of the contact person--Capital Assets Manager** for any deviation to these set work periods. Specific access points to be utilized by GRANTEE for the City Property shall be determined by GRANTOR. GRANTOR shall not unreasonably restrain the work of the GRANTEE. It is expressly understood and agreed, however, such daily operations are not to be disrupted by any work contemplated by this instrument.

07 JAN 12 AM 8:45  
CITY CLERK DEPT.

**The following paragraph can be inserted if the work will be done in a secure site. This language is in the EPIA ROE and can be revised as appropriate.)**

9. GRANTEE agrees to abide by all security precautions and procedures established by GRANTOR and applicable regulatory agencies, including but not limited to the use of escorts while in secured areas. GRANTEE shall require escorts while in the \_\_\_\_\_ Areas, more fully described in the map attached hereto and incorporated herein for all purposes as **ATTACHMENT 2.** (insert name of contact person), or his/her designee, shall be required to escort GRANTEE, its contractors, and subcontractors while in the \_\_\_\_\_. All costs related to the provision of escorts through the \_\_\_\_\_ shall be paid by GRANTEE directly to \_\_\_\_\_ at a rate of \_\_\_\_\_ AND 00/100 DOLLARS (\$\_\_\_\_) per hour, per employee. Further, while in the \_\_\_\_\_, GRANTEE shall be responsible for providing an escort through a private security service approved in advance by the \_\_\_\_\_. This private security service shall be responsible for escorting GRANTEE and its contractors and subcontractors at all times, while in the \_\_\_\_\_ Area. All costs related to such private security service shall be the sole responsibility of GRANTEE. GRANTEE shall not require any escort while in the \_\_\_\_\_ Area. However, access to the \_\_\_\_\_ Area shall require the appropriate security clearance and badge requirements noted herein. )
10. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
11. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.
12. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any real property interest, use in the City Property, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of performing the **insert reason for request i.e., conduct a field surveys, soil borings, etc.** as referenced herein. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.
13. All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

GRANTOR:

GRANTEE:

07 JAN 12 AM 8:45  
CITY CLERK DEPT.

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

14. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_.

GRANTOR:  
CITY OF EL PASO, TEXAS

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_

\_\_\_\_\_

#### ACKNOWLEDGMENT

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 200\_, by  
**Joyce A. Wilson**, as **City Manager** of the **City of El Paso**.

\_\_\_\_\_  
**Notary Public, State of Texas**

07 JAN 12 AM 8:45  
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EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 200\_\_.

GRANTEE:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

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07 JAN 12 AM 8:45